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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,875	10/23/2003	Don Schroeder	3500-00057	9011
26753	7590	07/07/2005		
ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				
			EXAMINER THOMAS, ALEXANDER S	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/691,875

Applicant(s)

SCHROEDER, DON

Examiner

Alexander Thomas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/23/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-8, 10, 11, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Maughan 3,929,536. See column 1, lines 58-63, column 2, lines 28-59, column 3, lines 5-24 and Figure 5. The term "rigid" in claims 1 and 10 is a relative term and, as such, does not define over the reference's article since any solid material may be considered rigid to a degree. Furthermore, the reference's article is considered to be rigid to a degree in a direction parallel to the longitudinal axis of the post. Concerning claim 4, the two plastic layers in the reference may be ultrasonically sealed at a seam. This inherently requires that the two plastic layers overlap since ultrasonically sealing two materials requires that they overlap. Regarding the presence of a paper label layer in the protector (claims 8, 10 and 11), one of the outer paper layers in the reference's article may be considered a paper label layer.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 9 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maughan. The reference discloses the invention substantially as claimed, namely an elongated L-shaped corner protector comprising a plurality of paper layers and a layer of plastic over the paper layers; see column 1, lines 58-63, column 2, lines 28-59, column 3, lines 5-24 and Figure 5. However, it does not disclose a seam of the two plastic materials at the apex of the protector or a paper layer that overwraps the edges of the protector. It would have been obvious to one of ordinary skill in the art to position the seam of the two plastic layers in the article of reference in any position, such as at the apex of the legs, since the shifting of the location of parts is well within the purview of one of ordinary skill in the art; see for example *In re Japikse* 86 USPQ 70 (CCPA 195). Regarding the addition of another paper layer that overlaps the edges of the protector under the plastic layer, it would have been obvious to one of ordinary skill in the art to add such a layer if more structural integrity in the protector was desired.

5. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's acknowledged state of the art in view of Maughan. The primary reference discloses the invention substantially as claimed, namely an elongated L-shaped corner protector comprising a plurality of paper layers; see page 1, lines 9-15, of the instant specification. However, it does not disclose the placement of a plastic layer over the protector. The secondary reference discloses covering paper corner protectors with plastic layers in order to provide water resistance; see the Abstract. It would have been

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obvious to one of ordinary skill in the art to provide the corner protector of the primary reference with a plastic cover in view of the teachings in the secondary reference in order to provide water resistance the corner protector. Concerning claims 5 and 14, the secondary reference discloses a seam of two plastic cover layers at an edge of the protector. It would have been obvious to one of ordinary skill in the art to position the seam of the two plastic cover layers in any position, such as at the apex of the legs, since the shifting of the location of parts is well within the purview of one of ordinary skill in the art; see for example *In re Japikse* 86 USPQ 70 (CCPA 195). Regarding the addition of another paper layer that overlaps the edges of the protector under the plastic layer, it would have been obvious to one of ordinary skill in the art to add such a layer to the protector of the primary reference if more structural integrity in the protector was desired.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Alexander S. Thomas". The signature is fluid and cursive, with the first name "Alexander" being more prominent than the last name "Thomas".

ALEXANDER S. THOMAS  
PRIMARY EXAMINER